

Notice of Allowability

Application No.

10/695,030

Examiner

NATALIA LEVKOVICH

Applicant(s)

BLANTON ET AL.

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview conducted on 07/17/2009.
2. ☒ The allowed claim(s) is/are 1-13 and 18-24.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>07/17/2009</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. Claims 1-13 and 18-24, as amended below, are allowable. Claims 10-13, 20-21 and 23-24, previously withdrawn from consideration as a result of the restriction requirement, of 04/03/2008, currently contain all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement set forth in the Office action mailed on 04/03/2008, is hereby withdrawn** and claims 10-13, 20-21 and 23-24 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Thomas Fairhall on 07/17/2009. The application has been amended as follows:

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IN THE CLAIMS:

Claim 1, line 15, before 'and (2)', **insert** — including the position of the carrier at an incubator loading position —

Claim 1, line 16, before 'a module for conducting optical measurements', **insert** — an incubator and —

Claim 1, line 1\9, after 'completion of vacuum loading of said test samples', **delete** “.”

Claim 1, line 1\9, after 'completion of vacuum loading of said test samples', **insert** — ; wherein the one or more optical sensors include an optical sensor located at the incubator loading position where the test sample devices are moved from the carrier into the incubator. —

Claim 10, line 14, before 'incubating said test devices', **insert** — an incubator —.

Claim 10, line 14, after 'incubating said test devices,', **delete** “and”.

Claim 10, line 14, after 'incubating said test devices,', **insert** — apparatus for —.

Claim 10, line 14, after 'reading said test devices', **delete** “;”.

Claim 10, line 14, after 'reading said test devices', **insert** — , and a transport system moving the carrier within the carrier and test device processing subsystem to an incubation loading position, the transport system having one or more optical sensors including an optical sensor located at the incubator loading position where the test sample devices are moved from the carrier into the incubator, —.

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2. The following is an examiner's statement of reasons for allowance:

Claims 1-13 and 18-24 are allowable over the prior art, since the prior art fails to teach or fairly suggest a fluid processing apparatus comprising a carrier configured for carrying individual fluid receptacles containing test samples and test sample devices; a vacuum station configured for loading the test samples from the individual fluid receptacles into respective test sample devices; and a carrier and test sample device processing subsystem comprising modules for processing the carrier and the test sample devices, the modules including an incubator and a module for conducting optical measurements on the test sample devices; the carrier and test sample device processing subsystem further comprising a transport system configured for moving the carrier within the carrier and test sample device processing subsystem, the transport system further comprising at least one optical position sensor, including an optical sensor located at the entrance of the incubator.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance." Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 2 p.m.-10 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797